RESPONSE

I. Comments on Earlier Requirement

The new Restriction Requirement at page 2 states that Applicants' earlier communication was "not fully responsive" because the earlier elected species "is not" recited within the claims of the earlier elected invention. Applicants believe their earlier communication to be fully responsive as the earlier elected species "was" recited within earlier elected invention at the time of the election.

The present Requirement at page 3 comments that Applicants have not provided or identified any evidence "showing the species to be obvious variant or clearly admit on the record that this is the case". Applicants are unclear of the meaning intended here, particularly the reference to "species" within the section of the Requirement concerning "groups" of invention. However, Applicants stress that no admission regarding obvious variations between any species or groups has been made and that none was intended. Applicants earlier traversal was based upon contesting the procedural grounds for the restriction and that all groups were classified in class 424 and thus did not have separate classification.

II. Revised Restriction Requirement

The revised Requirement now finds claims 1-43 to be drawn to the three inventions characterized as follows:

Group I: Claims 1-32 and 43, said to be drawn to kits comprising at least one targeting-therapeutic construct attached to a targeting agent-detectable agent construct or at least a second anti-cancer agent, said to be classified in class 530, subclass 388.8+;

Group II: Claims 33-37, said to be drawn to an imaging kit comprising two separate pharmaceutical compositions, said to be classified in class 424, subclass 1.11+; and

Group III: Claims 38-42, said to be drawn to a kit for treatment of cancer having a second therapeutic or targeting agent, said to be classified in class 514, subclass 2.

III. Comments on Revised Requirement

Applicants question the characterization of the Group I invention set forth at page 3. The claims of Group I are drawn to kits comprising at least one targeting agent-therapeutic agent construct that binds to an aminophospholipid, which kits also comprise either a targeting agent-detectable agent construct that also binds to an aminophospholipid or at least a second anti-cancer agent.

At the bottom of page 2, the Requirement first states that the instant kits comprise the targeting-therapeutic construct "in combination with either a targeting-detectable construct or a second anti-cancer agent". Applicants agree. However, the Requirement then immediately questions whether the kits are patentably distinct when they comprise "additional therapeutic or diagnostic compositions". This appears to represent a fundamental confusion.

As first stated in the Requirement, the kits must comprise either an additional detectable construct or anti-cancer agent. There are no claimed kits that do not comprise one of these additional diagnostic constructs or therapeutic agents. Therefore, kits comprising "additional therapeutic or diagnostic compositions" cannot be patentably distinct because they are the same as originally claimed.

IV. Response to Restriction Requirement

Applicants hereby elect Group I for initial prosecution on the merits. Although this election is made without traverse, the restriction is still not believed to be based upon sound reasoning, as set forth above.

V. Species Election Requirement and Response

The revised Requirement also finds the claims of all Groups to be directed to various patentably distinct species, which are set forth at pages 4 and 5.

Applicants make the following good faith attempt at a complete election, although the species within the Group I invention are not well delineated in all cases. Applicants particularly question the characterization of Species I, in which the targeting agents are said to be directed to "an specific protein or two binding ligand". The targeting agents for use in the invention are directed to aminophospholipids, which are not proteins (and are not binding ligands in the context of the specification).

Applicants elect kits comprising an aminophospholipid targeting agent (I) comprising an antibody or fragment thereof (II *vs.* III) that is linked to a coagulant (IV *vs.* V), which kits further comprise at least a second anti-cancer agent (VI *vs.* VII).

The species elections are made without traverse. Claims 1-9, 16-19 and 24-43 read on the elected species. Claims 10-15, 20-23 and 44 remain pending in the case and are available for rejoinder upon the allowance of a generic claim, as provided by 37 C.F.R. § 1.141.

VI. Status of the Claims

Claims 33-42 have been canceled as drawn to non-elected inventions, despite the presence of corresponding dependent claims within the elected invention. Claim 44 has been added, which is fully supported by original claim 35. No claims have been amended.

At least claims 1-32, 43 and 44 are pending in the case. At least claims 1-9, 16-19 and 24-43 read on the elected species. For the convenience of the Examiner, a copy of the pending claims is attached hereto as **Exhibit A**.

VII. Conclusion

This is a complete response to the referenced Requirement. Should Examiner Sharareh have any questions or comments, a telephone call to the undersigned Applicant's representative is earnestly solicited.

Respectfully submitted,

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